

REMARKS

CLAIM STATUS AND AMENDMENT

With this Amendment Response, claims 1-13, 17-22 and 27-30 are pending. Claims 1, 11, 17-19, 21, 22, 27 and 29 have been amended, and claims 14-16 and 23-26 have been cancelled to expedite prosecution of the present application. Claim 30 is newly presented for examination.

Claims 1, 27 and 29 have been amended to recite that the oil or fat to be used in the food product is mixed with a hydrated cyclodextrin in an amount effective to thicken the fat or oil. Additionally, new method claim 30 is similar to originally presented method claim 14, except that that method claim also recites that the oil or fat to be used in the food product is mixed with a hydrated cyclodextrin in an amount effective to thicken the fat or oil. Antecedent basis for this amendment may be found in paragraphs 0008, 0013 and 0027 of the specification. Claims 18, 19 and 22 have been amended to depend from new claim 30.

Claims 11, 17 and 21 have been rewritten in independent form.
Applicants respectfully request reconsideration and allowance of the application in view of the present amendment and following remarks.

RESTRICTION REQUIREMENT – ELECTION

Applicants hereby affirm the election of group 1, claims 1-22 and 27-29 without traverse. Non-elected claims 23-26 have been cancelled without prejudice in order to expedite prosecution.

OBJECTIONS

Applicants gratefully acknowledge indication of allowability of the subject matter of claims 11, 12, 17 and 21. Claims 11, 17 and 21 have been rewritten in independent form to place these claims in condition for allowance. Claim 12 depends from claim 11, and therefore also should be in condition for allowance.

REJECTIONS UNDER 35 U.S.C. § 103(A)

Claims 1-3, 6-10, 13-16, 18-20, 22 and 27-29 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Qi in view of Bailey's Industrial Oil and Fat Products (authored by Swern, hereinafter "Bailey's").

The present invention relates to a fat containing food product having reduced trans fat levels. As noted in the specification, trans fats have become a conventional component of food products through the hydrogenation process that has traditionally been used to increase the solid fat content of fat, thereby thickening the fat. See paragraph 0008 of the specification. Surprisingly, it has been found that the creation of cyclodextrin-fat complexes provide thickened fat, without creation of undesirable trans fats, thereby making it possible to provide desirable fat containing foods with substantial reduction of trans fat levels. See paragraph 0013 of the specification. The claims have been amended to specify that the oil or fat to be used in the food product is mixed with a hydrated cyclodextrin in an amount effective to thicken the fat or oil. See paragraph 0027 of the specification.

Qi discloses a system for incorporation of fish oils, which provide medicinal and nutritional benefits, into dry food compositions. As noted in Qi at column 1, lines 30-34:

Fish oils themselves have an unpleasant odor and flavor and are a liquid which makes them unacceptable for a number of dry foodstuffs such as powdered drink mixes, infant formula, health bars, breakfast cereals, baked goods, dressings and dairy products. (emphasis added)

Qi overcomes this obstacle by creating a dry composition that contains a high load of oil in a starch based matrix that contains little or no cyclodextrin. See column 1, line 66 to column 2, line 2. This oil product is prepared by mixing the oil and the starch matrix in an emulsion, and drying the emulsion to form a dry ingredient product. See column 2, line 49 to column 3, line 4. Thus, Qi fails to disclose, teach or suggest the mixing of cyclodextrin with oil or fat in an amount effective to thicken the fat or oil, as required by the claims as amended. Qi does not contemplate a thickened oil or fat, but rather describes only a dry oil or fat product formed by using a matrix that is predominantly or completed constituted of starch and oil, with little or no cyclodextrin. It is respectfully submitted that Bailey's fails to bridge the gap between Qi and the present claims.

Bailey's is cited for the purpose of showing that natural fats do not contain trans fats. Bailey's, however, provides no teaching, motivation, or suggestion to thicken a fat of any kind by using cyclodextrin, and to use such a thickened fat in a fat containing product having reduced trans fat levels.

Claims 4-5 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Qi in view of Bailey's, and further in view of Takada.

Takada is cited for the purpose of showing that the use of an enzyme to form cyclodextrin. It is respectfully submitted that Takada also does not bridge the gap between Qi in combination with Bailey's and the present claims. Takada provides no teaching, motivation, or suggestion to thicken a fat of any kind by using cyclodextrin, and to use such a thickened fat in a fat containing product having reduced trans fat levels.

Claim 1 has been rejected under 35 U.S.C. 103(a) as being unpatentable over Roderbourg in view of Bailey's.

Roderbourg discloses a process for reducing the content of cholesterol and of free fatty acids of an animal fat material. In this process, the fat is placed in contact with cyclodextrin, under stirring and in the presence of water, the ratio by weight water/fat, the temperature and the stirring being regulated so that a fine emulsion of the "oil in water" type is formed. See the Abstract. The resulting cyclodextrin-cholesterol and cyclodextrin-free fatty acid complexes are then separated from the fat prior to consumption. See column 1, line 66 to column 1, line 5; column 5 lines 39-42; column 6, lines 36-41; and column 16, lines 52-53.

Thus, Roderbourg does not contemplate using a fat/cyclodextrin complex in a food product, but rather teaches that the cyclodextrin complex that is formed in the process steps described therein should be removed prior to consumption. It is respectfully submitted that Bailey's fails to bridge the gap between Roderbourg and the present claims.

As above, Bailey's is cited for the purpose of showing that natural fats do not contain trans fats. Bailey's, however, provides no teaching, motivation, or suggestion to thicken a fat of any kind by using cyclodextrin, and to use such a thickened fat in a fat containing product having reduced trans fat levels.

PROVISIONAL REJECTIONS

Claims 1-10, 13-16, 18-20, 22-24 and 27-29 have been provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of copending Application Serial No. 10/318,445, now Publication US 2004/0116382 (“Plank”) in view of Bailey’s.

Claims 1-10, 13-16, 18-20, 22-24 and 27-29 have been provisionally rejected under 35 103(a) as being unpatentable over claims 1-20 of copending Application Serial No. 10/318,445, now Publication US 2004/0116382 (“the Plank Application”) in view of Bailey’s.

A terminal disclaimer with the appropriate fee, disclaiming the subject matter of the present claims beyond the term of any patent that would issue from the Plank Application attached hereto. It is respectfully submitted that this Terminal Disclaimer obviates the outstanding double patenting rejection.

STATEMENT CONCERNING COMMON OWNERSHIP

The present application and the Plank Application were, at the time the inventions were made, subject to an obligation of assignment to the same person.

It is respectfully submitted that the above statement obviates the rejection of the present application in view of the Plank Application.

REJECTION UNDER 35 U.S.C. § 102(b)

Claims 1-3, 6, 8, 10, 13-16, 18-20, 22 and 27-29 have been rejected under 35 U.S.C. § 102(b) as being anticipated by Saito as further evidenced by Bailey’s. Saito discloses a fat-reducing food containing alpha cyclodextrin and gamma-linolenic acid. The alpha cyclodextrin is disclosed in the examples to be added to evening primrose oil containing gamma-linolenic acid, which is then processed into granules or pressed into tablet form. Thus, Saito does not contemplate preparation of a thickened oil or fat, but rather describes only preparation of a dry granule or tablet as a food supplement. Saito therefore does not anticipate the present claims as amended.

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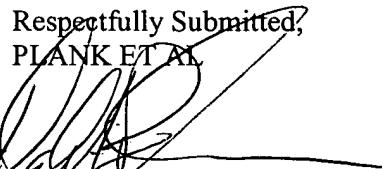
CONCLUSION

It is respectfully submitted that the cited references, alone or in combination, fail to teach or suggest the subject matter of the present claims. In view of the foregoing, Applicants respectfully request that the rejection of claims be withdrawn and that the application be allowed.

The Examiner is invited to contact the undersigned, at the Examiner's convenience, should the Examiner have any questions regarding this communication or the present patent application.

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By: _____

Respectfully Submitted,
PLANK ET AL.

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